

# Chile

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## REGULATORY

### Governance structure

1 | What is the regulatory governance structure in professional sport in your jurisdiction?

The Ministry of Sports, through the National Sports Institute (IND), promotes the practice of sports. In addition, the IND has established and issued the basic guidelines to which all professional sports organisations are subject, in accordance with the rules set forth under Law No. 20,019 that regulates professional sports corporations.

For these purposes, the law created a registry of professional sports organisations, administered by the IND, in which the by-laws of each institution must be registered. The IND supervises the incorporation, as well as the permanence and elimination, from said registry, based on the fulfilment of the legal requirements. On the other hand, the financial and accounting aspects of professional sports organisations are supervised by the Financial Market Commission (CMF), a government agency that is in charge of supervising the proper functioning, development and stability of the financial market, facilitating the participation of market agents and maintaining public trust.

For example, all sports organisations linked to professional football (this being the most relevant professional sports activity), must present their budgets, balance sheets and other financial information before the CMF.

Additionally, professional football is subject to rules dictated by the National Association of Professional Football (ANFP), which is the entity that groups professional football clubs, and is a member of the Federation Internationale de Football Association (FIFA), meaning that the directives issued by FIFA are applicable to the professional football clubs.

The ANFP mainly regulates sport matters, but also regulates financial aspects of the professional football clubs through the Regulation of the Financial Control Unit, which requires, among other matters: (1) presenting an annual operating budget with a result equal to or above zero. If the presented budget shows a negative result, the deficit must be guaranteed by the directors or administrators of the entity; and (2) that the amount allocated to the remuneration of the professional staff and players does not exceed 70 per cent of the total income of the entity.

Finally, the ANFP has issued the Club Licence Regulation, which creates the general framework and requirements that each professional football club must comply with to be able to participate in the professional football league. This general framework was released during 2017 and established various obligations for professional football clubs, most of which are enforceable as of 2018, and others that are subject to a greater investment will be enforceable as of 2019 or 2020.

### Protection from liability

2 | To what extent are participants protected from liability for their on-field actions under civil and criminal law?

There is no special protection for athletes with regard to their liability related to their performance under civil or criminal law.

However, Law No. 20,844 establishes the rights and duties of attendees and organisers of professional football shows, and also creates a general framework to avoid and control violence in stadiums. This law also establishes certain specific infractions that may be committed by athletes during sporting events and sanctioned in accordance with the articles it sets forth.

### Doping regulation

3 | What is the regulatory framework for doping matters in your jurisdiction? Is there also potential secondary liability for doping offences under civil or criminal law?

Law No. 20,686 of 2013 created the Ministry of Sports. This Law and the Ministry, through the National Doping Control Commission (CNCD), establish the general framework to control and prevent doping.

The Ministry of Sports, complying with its legal mandate and the general anti-doping criteria set forth by the World Anti-Doping Agency, issued Ruling No. 437, which established the regulation and enforcement of doping controls. This ruling and its implementing regulations are completely enforceable upon professional sport.

With regard to professional football, not only are Law No. 20,686 and Ruling No. 437 applicable, but also each and every relevant ruling issued by FIFA or the South American Football Confederation (CONMEBOL), which in 2015 released the Anti-Doping Regulation, which is applicable to every international tournament organised by it.

Given that in Chile personal drug consumption is not a criminal offence, there is no secondary liability under criminal law. However, this does not prevent there being civil effects owing to a possible breach of the contractual obligations enforced because of an employment or commercial contract.

### Financial controls

4 | What financial controls exist for participant organisations within professional sport?

With regard to professional football, the internal regulations and rulings of the ANFP establish special limits to the hiring of professional football players, considering the income of each specific football club. Any projected budget must be financed or guaranteed by its directors or administrators.

## DISPUTE RESOLUTION

### Jurisdiction

- 5 | Who has jurisdiction over the resolution of professional sport disputes in your jurisdiction, and how is this determined?

Each professional league has its own sport tribunals that are in charge of resolving any professional sports disputes that may arise. Professional football through the National Association of Professional Football (ANFP) has its own arbitral tribunal, the Patrimonial Affairs Tribunal (TAP), and because the ANFP is part of FIFA, the tribunals of the latter also have jurisdiction to settle professional sports disputes. Jurisdiction is also granted to the Court of Arbitration for Sport (CAS). Even though FIFA prohibits submitting sports matters to the ordinary justice courts, Chilean legislation has not recognised a limitation in this regard.

### Enforcement

- 6 | How are decisions of domestic professional sports regulatory bodies enforced?

The rulings issued by the TAP can be of two categories: sport and economic. Sport rulings are executed and enforced by the ANFP itself, through its own rules and sanctions. The sport rulings can be appealed before the jurisdictional entities of FIFA and in a last instance before the CAS. Economic rulings are also executed and enforced by the ANFP itself, since it holds control over the income of television rights of the local tournament and can, therefore, withhold payments to divert them to the favoured party in the arbitral decision.

### Court enforcement

- 7 | Can the decisions of professional sports regulatory bodies be challenged or enforced in the national courts?

Yes, in the case of arbitration judgments, these may be challenged by the entity in front of the ordinary courts; however, certain prohibitions must be borne in mind. Additionally, arbitral judgments that are not voluntarily fulfilled can be executed through the ordinary courts, which are the only courts with the capacity to force the compliance of the judgment. Judgments issued by the TAP are enforceable by the TAP, since it holds, through the ANFP, control over the television rights income and its distribution to sport entities, and can therefore withhold such payments to enforce its ruling.

## SPONSORSHIP AND IMAGE RIGHTS

### Concept of image rights

- 8 | Is the concept of an individual's image right legally recognised in your jurisdiction?

The concept of the individual's image right is neither specifically recognised nor regulated. However, consistent case law issued by the Supreme Court and Appeals Court recognises that an individual's image right is included as a constitutional right based on the respect and protection afforded to a person in his or her private and public life, and the honour of all persons and their families (article 19 No. 4 of the Chilean Constitution).

The same case law recognises that the image right can be enforced before the Appeals Court in the context of what is provided for in the Constitution. If the Appeals Court (or the Supreme Court reviewing the Appeals Court's decision) recognises an infringement of the individual's image right, damages can be sought before ordinary civil courts.

Since the individual's image right is recognised as a 'personal right', Chilean regulations do not provide for any requirement to own or register it.

### Commercialisation and protection

- 9 | What are the key legal considerations for the commercialisation and protection of individuals' image rights?

Relevant Chilean case law recognises two aspects derived from the individual's image right. First, the owner of the image is authorised to capture, reproduce and publish his or her own image, ascribing it to any lawful subject. However, the owner of the image is entitled to prevent third parties from capturing, reproducing or disseminating that image without his or her due authorisation, for whatever purpose. Limited exceptions are recognised for images taken in public places for new purposes.

Therefore, the owner of an image right has the right to commercialise the image through licences, which can limit the time and purpose for which the image is used. Infringement of the licences can be enforced as a contract breach before ordinary courts.

- 10 | How are image rights used commercially by professional organisations within sport?

Normally, the right of the professional sports organisations (in Chile, normally football professional teams) to use the image rights (normally of the players) is a relevant clause in the employment contract between the professional club and the player.

Consequently, the player can limit his or her image right while part of the club, according to, for instance, the club's advertising policies.

### Morality clauses

- 11 | How can morality clauses be drafted, and are they enforceable?

Morality clauses are considered a 'negative obligation' recognised and regulated in the Civil Code. This covenant can be defined as the duty of refraining from doing something that otherwise would be licit to do. If the obligation is breached, damages can be sought or related clauses of the employment contract can be applied.

### Restrictions

- 12 | Are there any restrictions on sponsorship or marketing in professional sport?

Restrictions on sponsorship or marketing can be contractual or legal. A contract, such as an employment contract between a sports club and an athlete, can include restrictions according to the sports club's particular policies.

Special regulations can also stipulate limitations or prohibitions. For instance, Law No. 20,660 bars any kind of advertising, including advertising in sports venues such as stadiums or as part of sponsorship for sports clubs. Alcoholic beverages have different regulations. The sale and consumption of alcoholic beverages is not permitted in sports venues such as stadiums or even, for some critical matches, within the surrounding area. Although sponsorship and advertising by alcoholic beverage companies is not prohibited, restrictions such as a prohibition on advertising alcoholic beverages to underage people or time restrictions for television advertisements can have an impact on sponsorship and marketing in professional sports in an indirect way.

## BRAND MANAGEMENT

### Protecting brands

#### 13 | How can sports organisations protect their brand value?

From an intellectual property perspective, the Chilean legal system relies heavily on a first-to-file mode, giving priority to registered trademarks over unregistered trademarks. For instance, to enforce a trademark it is strictly necessary to hold a valid registration. In addition, once a trademark is registered, there is no use requirement to maintain the validity of the registration or renew it.

In addition, sports organisations can work closely with Chilean customs and police to prevent the import and commercialisation of pirated products, protecting their brand value against unlawful use of trademarks by third parties.

#### 14 | How can individuals protect their brands?

The Chilean legal system does not differentiate between the protection of trademarks for organisations and individuals.

### Cybersquatting

#### 15 | How can sports brands and individuals prevent cybersquatting?

Prevention is the better way to face cybersquatting. Of course, registering every domain name extension is neither possible nor necessary in every case. Good criteria can be the country code top-level domains (ccTLDs) and generic top-level domains (gTLDs) according to the business area and the territory of operation. In addition, registering common misspellings might be a good strategy to prevent 'typosquatters'. Sports brands should always be aware of the renewal dates and monitor whether any similar domain names have been registered.

### Media coverage

#### 16 | How can individuals and organisations protect against adverse media coverage?

Traditional judicial actions against adverse media coverage or fake news provided by Chilean regulations are criminal actions of defamation, divided into two categories: defamation (any opinion or action with the intention of affecting the honour of a certain person) and slander (attributing a false crime to a certain person).

However, considering that fake news or adverse media coverage can be spread widely through the internet and social media, other actions, such as take-down notices, should be considered by exposed individuals. Chilean law does not regulate those measures, but they are administrative measures offered by such law. Moreover, the market currently offers several services of risk management related to adverse media. Those services include monitoring millions of articles from different sources (news related to, for example, crime, corruption, terrorism, money laundering and unethical behaviour).

## BROADCASTING

### Regulations

#### 17 | Which broadcasting regulations are particularly relevant to professional sports?

Except for a minor section in Law No. 18,838 of the Television National Council, there is no specific regulation applicable to professional sports broadcasting. This section provides that the official games of the national football team must be broadcast through free-to-air television.

Besides that, professional sports broadcasting is a matter of private law, regulated in the agreements between those associations or entities in charge of each event, owners of the broadcasting rights and those interested in broadcasting such events, if any. For example, the professional football teams are affiliated with the National Association of Professional Football (ANFP), which is in charge of negotiating agreements on the television rights of each team, among other duties. Because of this mandate, the ANFP negotiated a joint venture with a private company for the broadcasting of football games of the national championship.

### Restriction of illegal broadcasting

#### 18 | What means are available to restrict illegal broadcasting of professional sports events?

Illegal broadcasting may be prevented or sanctioned through a civil or criminal action, as it may be considered a violation of intellectual property rights. The affected party may request the cease and desist of the infringing broadcast, as well as compensation for the damage suffered. Law No. 17,336 on Intellectual Property provides for the procedure before courts and the penalties for infringements.

## EVENT ORGANISATION

### Regulation

#### 19 | What are the key regulatory issues for venue hire and event organisation?

The general framework is set by Law No. 19,496, which regulates and sets the protection of consumer rights, establishing minimum standards in terms of the information that must be provided when offering services or products. Notwithstanding the above, professional football is also regulated through the provisions set forth in Law No. 20,844, which establishes the rights and duties of assistants and organisers of professional football events – a norm that not only sets standards for behaviour, but also minimum requirements for venues that host these types of events and their corresponding organisation.

### Ambush marketing

#### 20 | What protections exist against ambush marketing for events?

There are no specific sports regulations regarding this topic.

### Ticket sale and resale

#### 21 | Can restrictions be imposed on ticket sale and resale?

Yes, Law No. 20,844, article 27(a) prohibits the resale of tickets. Resale is understood as the sale of a ticket at a price higher than the one paid for its acquisition. The same law establishes sanctions for those who commit crimes within the stadium, with those sanctioned being included in a general prohibition register, whereby they are prohibited from attending sports events and acquiring tickets.

## IMMIGRATION

### Work permits and visas

#### 22 | What is the process for clubs to obtain work permits or visas for foreign professional athletes, and coaching and administrative staff?

The process is the same as that applicable to any other foreigner, meaning that there are two forms of applications that may be issued at the same time: (1) a tourist work permit, which may be issued for a

period of up to 30 days and may be renewed for two additional 30-day periods, only if a tourist visa is still in force (this is used before and during the time it takes the immigration authority to accept the issuance of a temporary residence); and (2) a temporary residence, which may range from one to two years. After this, permanent residency applies.

23 | What is the position regarding work permits or visas for foreign professional athletes, and coaching and administrative staff, temporarily competing in your jurisdiction?

No special requirement applies. These individuals are deemed as tourists and a visa is only required for certain nationalities.

### Residency requirements

24 | What residency requirements must foreign professional athletes, and coaching and administrative staff, satisfy to remain in your jurisdiction long term or permanently?

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25 | Do the family members of foreign professional athletes, and coaching and administrative staff, legally resident in your jurisdiction have the same residency rights?

No. The work permit or visa of the professional athlete, coach or administrative staff does not authorise family members to work or engage in employment, but only to reside in the country. To work or engage in employment, family members must justify occupational positions by themselves.

## SPORTS UNIONS

### Incorporation and regulation

26 | How are professional sporting unions incorporated and regulated?

No special regulations apply. Unions are permitted as in any other company. Sports unions exist mainly at an intercompany level. An intercompany union may be formed with 25 employees.

Employees may participate in the formation meeting regardless of their hiring term (eg, permanent, fixed-term or project-based) or the location where they provide their services. Employees may join the union after its formation as well.

These statutory regulations only apply to professional football clubs.

### Membership

27 | Can professional sports bodies and clubs restrict union membership?

No.

### Strike action

28 | Are there any restrictions on professional sports unions taking strike action?

No.

## EMPLOYMENT

### Transfers

29 | What is the legal framework for individual transfers? What restrictions can be placed on individuals moving between clubs?

The following statutory regulations only apply to professional football clubs. The first employment agreement term of an individual must range between one season and five years. Each renewal may be agreed for at least one season.

Training compensation shall be paid to a player's training club or clubs when a player signs his or her first employment agreement as a professional.

Performance incentives must be paid within 90 days of the termination of the season where the incentive was accomplished.

Transfer may imply termination of employment. If it does, the individual must obtain compensation in lieu of the agreed term. If not, the assignor club has subsidiary liability if the assignee club fails to pay employment compensation.

Clubs are required to inform the Chilean football supervisory authority of the up-to-date employment and social security compliance status. Failure to do so authorises the individuals to request from the authority the withholding of any amount due to the club, whether it is paid to the individuals or otherwise.

Disciplinary action cannot be taken in situations that are not related to employment.

Disciplinary action cannot include vacation or time off reduction, or training exclusion.

### Ending contractual obligations

30 | Can individuals buy their way out of their contractual obligations to professional sports clubs?

In professional football, yes. However, it is not customary.

### Welfare obligations

31 | What are the key athlete welfare obligations for employers?

In professional football, no special obligations apply. Duty of care and protection of health and safety obligations apply.

### Young athletes

32 | Are there restrictions on the employment and transfer of young athletes?

Not at a local level; however, in professional football FIFA's international restrictions are applicable in relation to the transfer of young football players.

33 | What are the key child protection rules and safeguarding considerations?

For professional football, they are the same as those set forth in FIFA's regulations.

**Club and country representation**

**34** | What employment relationship issues arise when athletes represent both club and country?

Professional football clubs are required to accept calls made by the national football team. The player, however, is not obliged to assist or concur with the call made by the national football team. If a football player is injured while representing the national football team, the costs, rehabilitation and remuneration of the football player will be funded by the insurance that the National Association of Professional Football keeps for all the football players that represent the national football team. Finally, if the national football team is representing the country in international tournaments, such as the World Cup or the South American Cup, the international entity (FIFA or the South American Football Confederation (CONMEBOL) pays each club a determined amount for each player joining the national football team.

**Selection and eligibility**

**35** | How are selection and eligibility disputes dealt with by national bodies?

With regard to professional football, national employment courts have jurisdiction to resolve disputes in spite of any provision to the contrary. Employment matters have a public policy nature.

**36** | What are the key taxation issues for foreign athletes competing in your jurisdiction to be aware of?

Foreign athletes are subject to a withholding tax, with a tax rate of 20 per cent on services rendered in Chile. Athletes are deemed foreign if they do not have domicile or residence in Chile. That being the case, regular taxation is applicable; foreign athletes will be subject to a progressive tax with a tax rate of up to 35 per cent on the Chilean income.

Constituting domicile or residence will depend on many factors, such as the time spent in Chile and whether family members are living in the country.

Finally, it is important to take into account that during the first three years of domicile or residence in Chile, foreign athletes are subject to taxation exclusively on Chilean source income. Once this time has elapsed, taxation will be applicable on their worldwide income.

**TAXATION**

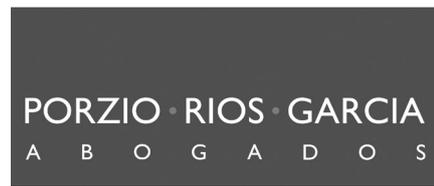
**Key issues**

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**UPDATE AND TRENDS**

**Key developments of the past year**

**38** | Are there any emerging trends or hot topics in your jurisdiction?

A motion to modify Law No. 20,019, which regulates professional sports corporations, is currently being discussed in the National Congress. The motion aims to:

- increase the inspection standards upon sports clubs through the Financial Market Commission, regardless of whether the club participates in the open market or not;
- more effectively control the possible conflicts of interest in the ownership of the clubs;
- allow clubs to be controlled by non-profit institutions; and
- consider alternatives to increase the participation of partners and fans in the controlling corporations of the sports clubs through capitalisation processes.

**Coronavirus**

**39** | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

There has been no special legislation, relief programmes or other initiatives that refer specifically to the sports industry. Generally applicable measures that have been implemented by sports enterprises include suspension of contracts, remote work for administrative personnel, reductions in force and access to the unemployment insurance, all allowed by new legislation.